

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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5890

November 20, 2013

[REDACTED]

IMC Shipping Co. Pte. Ltd

[REDACTED]

RE: J05003-0006

Dear Mr. Davis and Mr. Ray:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number J05003-0006 involving M/V SELENDANG AYU - J05003 spill.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request. Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number J05003-0006.

Mail reconsideration request to:

Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard
Arlington, VA 20598-7100

Sincerely,

[REDACTED]

Claims Manager
U.S. Coast Guard

Enclosures: Claim Summary / Determination

CLAIM SUMMARY / DETERMINATION

Claim Number: J05003-0006
Claimant: IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd
Type of Claim: Limit of Liability
Claim Manager: Dawn Unglesbee
Amount Requested: \$1,025.00

Incident

The M/V SELENDANG AYU was on a voyage from Seattle to China when on the morning of December 6, 2004 while operating in adverse heavy weather conditions, the crew shut down the main engine as a result of a casualty to the No. 3 cylinder. While attempting to repair the engine, the vessel drifted toward Unalaska Island and eventually grounded on December 8 on a rocky shelf on the north shore of Unalaska Island, Northeast of Spray Cape. The grounding ruptured the vessel's bottom tanks, releasing approximately 330,000 gallons of bunkers into the water off Unalaska Island.

Claimants and the Claim

Claimants

Ayu Navigation Sdn Bhd (Ayu), IMC Shipping Co. Pte. Ltd. (IMC), Sveriges Angfartygs Assurans Forening (The Swedish Club), and International Group of Protection and Indemnity Clubs (International Group) (collectively "the Claimants") are the responsible parties under the Oil Pollution Act of 1990 for this incident. Ayu owned the vessel, and IMC operated it. The Swedish Club, International Group, and the International Group's reinsurers were the subrogated underwriters.

Pursuant to 33 U.S.C. § 2708(a)(2), the Claimants presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) via the National Pollution Funds Center (NPFC) on December 07, 2007, asserting entitlement to a statutory limit on their liability for oil removal costs and damages resulting from the incident. On January 27, 2012, the NPFC determined that the Claimants were entitled to their statutory limit of liability, \$23,853,000. The Claimants now seek reimbursement for their incurred removal costs and damages paid to third parties above their liability limit.

Claim

Keesal, Young & Logan (KYL), representing Claimants, sent a letter to the National Pollution Funds Center (NPFC) dated December 6, 2007 outlining the third party claims for which Claimants seek reimbursement from the Fund. By letter dated March 21, 2012, Claimants submitted a document entitled Third Party Claim Detail that listed all costs paid to third party claimants plus the RP costs paid for certain vendors' services.¹ This claim before the Fund seeks reimbursement of \$1,025.00 that the Claimants paid to Natural Resource Consultants for fishing consulting services.

Applicable Law

The Oil Pollution Act of 1990 provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C §2702 (a).

¹ See, letter dated March 21, 2012 to the NPFC from Keesal, Young, & Logan.

A responsible party "may assert a claim for removal costs and damages under section 2713 of this title only if the responsible party demonstrates that" it is entitled to a limitation of liability under §1004 of OPA. 33 U.S.C. §2708(a)

Responsible parties who have demonstrated entitlement to a limit of liability may submit claims to the Oil Spill Liability Trust Fund for removal costs and damages incurred by the responsible party, plus amounts paid by the responsible party for claims asserted under section 1013 of OPA.

The Fund is available to pay claims for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages. 33 U.S.C. § 2712(a)(4). Covered damages under U.S.C. §2702 (b)(2)(A)-(F) are natural resources damages, real or personal property damages, loss of subsistence use, loss of net government revenues, loss of profits or impairment of earning capacity and increased costs for public services.

NPFC Analysis

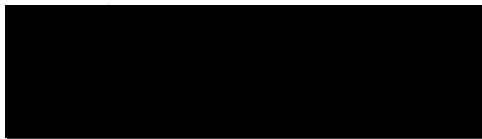
KYL, attorneys for Claimants, retained Steve Hughes, a fisheries expert at Natural Resource Consultants, to evaluate a claim submitted to the responsible parties by David Carson Haines, Romanzof Fisheries.² According to a letter from KYL, Mr. Hughes opened a case file for Mr. Haines and spent three hours reviewing materials and discussing the case with counsel.³

Mr. Hughes determined that the claim was false; the responsible parties subsequently denied the claim. Claimants seeks reimbursement for \$1,025.00 that it paid to Natural Resource Consultants for Mr. Hughes' services.

The claimed costs are those incurred by the responsible parties for consulting services provided by Natural Resource Consultants in evaluating a claim. Consulting costs are not removal costs or damages as defined by OPA. The Fund is not available to removal costs or damages that are not determined to be damages as defined by OPA.

This claim is denied.

Claim Supervisor:



Date of Supervisor's review: 11/20/2013

Supervisor Action: **Denial Approved**

Supervisor's Comments:

² In addition to filing a claim with the responsible party Mr. Haines filed a class action law suite in the U.S. District Court in Seattle in December 2007 alleging damages in the amount of \$12,006,000 resulting from the oil spill Natural Resources Consultants, Inc. Invoice # 1107-1933.